

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4036

IN THE MATTER OF:

Served January 12, 1993

Application of WDC SIGHTSEEING)
TOURS, INC., for a Certificate)
of Authority -- Irregular Route)
Operations)

Case No. AP-92-33

By application filed November 24, 1992, WDC Sightseeing Tours, Inc. (WDC or applicant), a District of Columbia corporation, seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District.

Old Town Trolley Tours of Washington, Inc. (Trolley or protestant), holder of Certificate of Authority No. 124, timely filed a protest and request for oral hearing on December 22, 1992. Trolley requests rejection of WDC's application on the ground that it does not meet the Commission's filing requirements. Trolley urges denial of the application on the ground that applicant has not carried its burden of showing fitness and consistency with the public interest. Trolley requests an oral hearing on the fitness issue if the application is not rejected or denied on the basis of the pleadings.

On December 29, 1992, WDC submitted a motion for extension of time to file a reply to Trolley's protest. On January 4, 1993, an extension was granted through January 7. WDC filed its reply on January 7, 1993.

THE COMMISSION'S FILING REQUIREMENTS

Filings submitted by a party must be signed, subscribed to and verified under oath.¹ Applications are to contain the information required by the Commission's application form and accompanying instructions and may be rejected by the Executive Director if incomplete or otherwise not in compliance with the Commission's regulations.² Trolley argues that WDC's application should have been rejected because it "omits the notarized signature of WDC's president or any other officer."

Part X of the application form submitted by WDC, titled "APPLICANT'S VERIFICATION," contains two subscription paragraphs. The first states that the signer verifies under penalty of perjury that the information in the application form and attachments thereto is correct to the best of his knowledge and belief and that he is qualified and authorized to file the application. The second states in pertinent part that such information is true.

¹Commission Rule No. 4-05, -06.

²Commission Regulation No. 54-02, -03 (emphasis added).

When WDC filed its application on November 24, the first subscription paragraph was signed and duly notarized; the second was not. WDC subsequently filed an amended verification on December 10, in which both paragraphs are signed and notarized. The Executive Director acted within his discretion in not rejecting WDC's application. Further, the amended application is in compliance with applicable filing requirements. Accordingly, there is no basis for rejecting the application at this time.

APPLICANT'S FINANCIAL FITNESS

Before ruling on the remainder of Trolley's protest and request for oral hearing, the Commission will direct the parties to further brief the issue of applicant's financial fitness. The reason for this is two-fold. First, neither the application nor the reply to Trolley's protest includes any assessment of start-up costs, e.g., down payments for leaseholds and insurance, vehicle inspection and registration fees, employee recruitment costs, painting and preparation of the vehicles. Second, the only evidence to date of cash-on-hand is applicant's balance sheet showing \$30,000, which -- according to applicant's own estimates -- is insufficient to cover the first two months of operations, let alone any start-up costs. Applicant avers that additional funds will be forthcoming, but the Compact requires an applicant to demonstrate at a minimum the present ability to sustain operations during the first year.³ Therefore, applicant will be required to submit a revised balance sheet, projected income statement and cash flow statement addressing these matters.

Since applicant's income projections have been overtaken by events and apparently do not reflect the seasonal nature of the market, seasonal estimates beginning April 1, 1993, and ending March 31, 1994, would appear to be more appropriate at this juncture. In addition, applicant should indicate, either on the income statement or in a supplemental statement, how much of the revenue it projects is attributable to charter operations and how much to "loop" operations, with a breakdown of "loop" revenue by fare category and an explanation of the basis for the various underlying ridership projections. Finally, applicant should clarify its tour bus staffing plans, including whether it has budgeted for two tour guides and a driver on each of four buses for eleven hours a day, seven days a week, as the reply seems to suggest. The parties are reminded that pleadings must meet the requirements of Commission Rule No. 4.

THEREFORE, IT IS ORDERED:

1. That the request of protestant for rejection of the application is hereby denied.

2. That applicant shall file the documents required by this order no later than Monday, February 8, 1993.

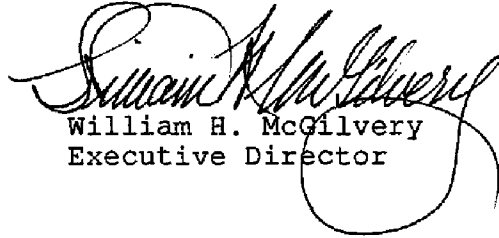
³ In re Model Transit, Inc., No. AP-92-27, Order No. 4003 (Sept. 21, 1992).

3. That applicant may file supporting argument of counsel and other evidence of financial fitness at the same time it files the documents required by this order.

4. That protestant may file a response within ten calendar days after the date of applicant's filing if said filing is served on protestant by hand, fourteen if served by mail.

5. That applicant may file a reply within seven calendar days after the date protestant's response is filed if said response is served on applicant by hand, ten if served by mail.

FOR THE COMMISSION:



William H. McGilvery
Executive Director